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From: bounce-1029386-8098898@lists.aphl.org on behalf of Victor Waddell
<Victor.Waddell@azdhs.gov>
Sent: Friday, March 23, 2012 1:48 PM
To: State Laboratory Directors' List
Subject: RE: [aphl-sld] Vendor Contract Question

Hi Robyn, these are the exact types of statements vendors try to put in contracts that have caused us so many problems and the inability to sign contracts with such companies. In most instances we have been unable to sign contracts with vendors who require this language however on a few occasions we have had our Attorney General's office agree for the state and the vendor to accept equal responsibility for the liability of a test kit failure, this was in cases where there were no alternate vendors. We have purchased through a third party contractor called Government Scientific Services (GSS) which has allowed us to purchase instrumentation and some service agreements (those which GSS is allowed to sell). GSS is not permitted to sell Roche service agreements and we do not have a contract with Roche (due to such statements in their contracts) so we are allowed a small dollar (\$5000/yr) purchase of instrument maintenance from Roche which allows us to get 1 or maybe 2 Roche MagnaPure instruments maintenance without signing a contract with Roche. The purchasing consortiums discussed at the LEI Procurement forum might be a way for you to get these test kits and service agreements.

Thank you

Victor

-----Original Message-----

From: bounce-1029355-8109962@lists.aphl.org [mailto:[bounce-1029355-8109962@lists.aphl.org">bounce-1029355-8109962@lists.aphl.org](mailto:bounce-1029355-8109962@lists.aphl.org)] On Behalf Of Robyn Atkinson
Sent: Friday, March 23, 2012 9:22 AM
To: State Laboratory Directors' List
Subject: [aphl-sld] Vendor Contract Question

Hi all-

We are in contract negotiations with a vendor for kits and service agreements. They are asking us to accept their terms and conditions for this contract. Embedded in the terms and conditions are two statements that have raised some eyebrows. I'm curious if you have been asked to accept similar terms and if so, do you accept them and are your lawyers comfortable with it?

- 1) A statement says that we cannot hold the company liable if the kit does not perform as they have stated it should.
- 2) A statement says that we cannot sue the company if the kit does not perform as stated and leads to an adverse outcome for a patient.

Your thoughts would be appreciated!

Happy Friday!

Robyn

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